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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FOURTH APPELLATE DISTRICT  
DIVISION TWO**

CLYDE WILSON LANE,

Plaintiff and Appellant,

v.

THE FORECAST GROUP, L.P. et al.,

Defendants and Respondents.

E035100

(Super.Ct.No. RCV58380)

O P I N I O N

APPEAL from the Superior Court of San Bernardino County. John M. Pacheco, Judge. Affirmed.

Reid & Hellyer, David G. Moore and Lisa M. Carlson, for Plaintiff and Appellant.

O'Melveny & Myers, Larry A. Walraven and Eric M. Amrusky, for Defendants and Respondents.

Following arbitration of a claim for unpaid wages, the plaintiff contends that the arbitrator exceeded his authority or acted without subject matter jurisdiction in awarding his former employer its attorney fees. We affirm.

## PROCEDURAL AND FACTUAL HISTORY

Clyde Lane (Lane) sued his former employer, the Forecast Group, L.P. (the company), for breach of his employment contract, alleging failure to pay compensation due him. His complaint sought reasonable attorney fees.

Lane's employment contract included a provision that all disputes or claims of any kind, except a workers' compensation or unemployment claim, would be subject to binding arbitration without right of appeal. The agreement incorporated the company's employee handbook. The handbook reiterated that any dispute arising out of Lane's employment, other than a workers' compensation or unemployment claim, would be subject to binding arbitration.

Lane was hired as "senior VP Forward Planning." He was an at-will employee. His compensation included salary as well as bonuses based on performance. After Lane had worked for the company for some time, the company determined that Lane's performance was inadequate and demoted him. A few months later, Lane's position was eliminated and his employment was terminated. Thereafter, he filed a complaint in San Bernardino County Superior Court.

The company's motion to compel arbitration was granted.

The arbitrator found in favor of the company and awarded it attorney fees in the amount of \$72,129.01.

The superior court denied Lane's motion to vacate or correct the award. It confirmed the arbitration award and entered judgment on the award.

Lane filed a timely notice of appeal.

## DISCUSSION

Lane argues that the arbitrator had no authority or subject matter jurisdiction under the employment contract to award attorney fees and that his prayer for attorney fees in the complaint did not constitute a voluntary submission of the issue of attorney fees to arbitration. Therefore, he contends, the trial court erred in denying his petition to vacate or correct the award.

### Standard of Review

A judgment entered upon confirmation of an arbitration award is appealable on the ground that the award exceeded the arbitrator's authority. (*Advanced Micro Devices, Inc. v. Intel Corp.* (1994) 9 Cal.4th 362, 366, 372-373, 374 (*Advanced*); Code Civ. Proc., § 1286.2, subd. (a)(4).) Although we review the superior court's order confirming the award de novo (*Advanced, supra*, at p. 376, fn. 9), both the superior court and the appellate court must review the arbitrator's award deferentially. The award must be affirmed if it is "even arguably based on the contract" between the parties. (*Id.* at p. 381.) Courts must also defer to the arbitrator's determination of the scope of his or her contractual authority to fashion remedies. (*Id.* at p. 376.) Thus, where the issue is the remedy chosen by the arbitrator, the question on appeal is whether the remedy is "rationally drawn from the contract" as interpreted by the arbitrator. (*Id.* at pp. 376-377.)

### The Arbitrator Did Not Exceed His Authority Under the Contract

Lane contends that the arbitrator exceeded the authority conferred on him by the parties' contract and in effect "remade" the contract.

The scope of an arbitrator's authority derives from the agreement between the parties. (*Advanced, supra*, 9 Cal.4th at pp. 372-373.) When parties agree to resolve statutory claims through arbitration, "it is reasonable to infer that they consent to abide by the substantive and remedial provisions of the statute. [Citation.]" (*Broughton v. Cigna Healthplans* (1999) 21 Cal.4th 1066, 1087.) "Otherwise, a party would not be able to "fully vindicate [his or her] statutory cause of action in the arbitral forum."" (*Ibid.*) Thus, when an employer and employee agree to arbitrate statutory claims relating to the employment relationship, such as a claim for unpaid wages, the full range of statutory remedies which would be available in an action in court is also available through arbitration. (*Armendariz v. Foundation Health Psychcare Services, Inc.* (2000) 24 Cal.4th 83, 103; *Caro v. Smith* (1997) 59 Cal.App.4th 725, 734-735.)

Lane's claim was for bonuses allegedly owed to him. Bonuses are "wages," as defined by Labor Code section 200.<sup>1</sup> An employee may bring an action in court to recover unpaid wages. (Lab. Code, § 218.5.) Lane's claim was thus a statutory claim, subject to the remedies provided for in the Labor Code.

Labor Code section 218.5 provides that in any action brought for the nonpayment of wages, the court shall award reasonable attorney fees and costs to the prevailing party "if any party to the action requests attorney's fees and costs upon the initiation of the

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<sup>1</sup> Labor Code section 200, subdivision (a) provides: "'Wages' includes all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis, or other method of calculation."

action.” Lane’s complaint included a request for reasonable attorney fees and costs. After the superior court ordered the parties to arbitrate the claim pursuant to their contract, Lane submitted his complaint to the arbitrator as his complaint in arbitration. Thus, at the initiation of the action, both in court and in the arbitration, Lane sought attorney fees and costs. As a result, the prevailing party was entitled to an award of reasonable attorney fees and costs. (Lab. Code, § 218.5.) The arbitrator did not exceed his authority in so interpreting the contract. (*Advanced, supra*, 9 Cal.4th at pp. 372-373, 376-377.)

Lane contends that arbitration is not an “action” for purposes of Labor Code section 218.5. This is incorrect. An “action” is defined as “an ordinary proceeding in a court of justice by which one party prosecutes another for the declaration, enforcement, or protection of a right, the redress or prevention of a wrong, or the punishment of a public offense.” (Code Civ. Proc., § 22.) A civil suit for damages is an action. Arbitration in lieu of a civil suit “serves as a substitute for proceedings in court” and is the functional equivalent of an action. (*Baker v. Sadick* (1984) 162 Cal.App.3d 618, 627-628.) Remedies which would have been available if the action had been brought in court are also available through arbitration. (*Broughton v. Cigna Healthplans, supra*, 21 Cal.4th at p. 1087; *Armendariz v. Foundation Health Psychcare Services, Inc., supra*, 24 Cal.4th at p. 103.)

*Villinger/Nicholls Development Co. v. Meleyco* (1995) 31 Cal.App.4th 321 (*Villinger*), cited by Lane, does not hold to the contrary. In *Villinger*, the trial court awarded the plaintiff attorney fees incurred in bringing its petition to confirm an

arbitration award, on the theory that the plaintiff was entitled by statute to attorney fees in any “action” brought pursuant to Civil Code section 3176 to enforce payment of a claim stated in a bonded stop notice. (*Villinger, supra*, 31 Cal.App.4th at pp. 326-327.) The Court of Appeal held that a petition to confirm an arbitration award is not an action but rather a special proceeding, as defined in section 22 of the Code of Civil Procedure. (*Villinger, supra*, 31 Cal.App.4th at p. 327.) This case involves an action, not a special proceeding, and *Villinger* is inapposite.

Also in reliance on *Villinger*, Lane asserts that if the arbitration agreement contains no attorney fee provisions, the arbitrator cannot rely on a statute to form the basis for an award of attorney fees. *Villinger’s* holding is not so broad. The published portion of *Villinger* deals solely with the trial court’s award of attorney fees in connection with the petition to confirm the arbitration award. The court’s holding merely refuses to interpret the word “action” as used in Civil Code section 3176 to include special proceedings. (*Villinger, supra*, 31 Cal.App.4th at pp. 328-329.) In dictum, *Villinger* also states that in arbitration, a party may not recover statutory attorney fees unless the arbitration agreement provides for an award of attorney fees to the prevailing party. (*Ibid.*) However, as discussed above, the California Supreme Court has held that when parties agree to arbitrate a statutory claim, all statutorily imposed remedies, including attorney fees, are available, and the agreement may not impose any limitation on the statutory remedies. (*Armendariz v. Foundation Health Psychcare Services, Inc., supra*, 24 Cal.4th at p. 103.)

Lane argues that the contract “specifically provided that each party would pay their [*sic*] own fees.” He does not refer us to any portion of the contract which contains such a provision, and we find none. The letter agreement makes no reference at all to attorney fees. The employee handbook provides that the parties will share the costs of arbitration equally, but it does not provide that each party will pay its own attorney fees. It refers to attorney fees only in the context of the right of a party to recover attorney fees if the other party pursues any legal or administrative action in lieu of arbitration. Under those circumstances, arbitration may be compelled, and the party seeking to compel arbitration may recover its costs, expenses and attorney fees incurred as a result of “such action.” Thus, contrary to Lane’s argument, the agreement does not limit the arbitrator’s authority to award attorney fees.

#### The Arbitrator Had Subject Matter Jurisdiction

Lane contends that the arbitrator did not have subject matter jurisdiction because the issue of attorney fees was not part of the controversy submitted to arbitration and that his request for attorney fees did not constitute a waiver of any objection as to the scope of the arbitration agreement.

In the context of arbitration, subject matter jurisdiction simply means the arbitrator’s authority to decide a certain type of controversy or to decide issues that are part of the controversy subject to arbitration. That authority is conferred on an arbitrator by the agreement of the parties, and its scope is determined by the agreement.

(*Advanced, supra*, 9 Cal.4th at pp. 372-373, 374.) Thus, Lane’s claim that the arbitrator lacked jurisdiction merely restates his claim that the arbitrator exceeded his authority

under the contract. For the reasons previously stated, the issue of statutory attorney fees was properly before the arbitrator.

#### CONCLUSION

The arbitrator did not exceed his authority in awarding the company its reasonable attorney fees, and the superior court properly confirmed the award.

#### DISPOSITION

The judgment is affirmed. The Forecast Group, L.P., is awarded its costs on appeal.

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/s/McKINSTER  
Acting P.J.

We concur:

/s/RICHLI  
J.

/s/WARD  
J.